



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1997

Mr. Jim Phillips
Deputy Director
Office of Legal Services
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR97-2495

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110271.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "[a]ll reports . . . submitted by representatives of Union Pacific Railroad during the years 1995 through 1997 and related to contamination in the vicinity of U.S. Business Highway 83 and South 23rd Street, in McAllen, Texas, resulting from release or releases of gasoline or petroleum products." You state that the commission has two documents responsive to the request: a Preliminary Investigation Workplan, which has been released to the requestor, and a Preliminary Site Investigation Report (the "report"). You seek a decision from this office as to whether the report must be withheld pursuant to section 552.305 of the Government Code. We have considered your arguments and have reviewed the information submitted.

You state that Missouri Pacific Railroad (MOPAC), the successor in interest to Union Pacific Railroad at the subject location, submitted the report to the commission under a claim of confidentiality.¹ Pursuant to section 552.305 of the Government Code, this office informed MOPAC of the request and of its obligation to submit to this office any arguments as to why any claimed exceptions to disclosure apply to their information. By letter dated October 14, 1997, counsel for MOPAC informed this office that MOPAC is no longer asserting a claim of confidentiality as to the requested information, and has no objection to its release. Therefore, as no exception has been raised

¹We note that information is not excepted from disclosure merely because it is furnished with the expectation that it will be kept confidential. See, e.g., Open Records Decision No. 180 (1977).

for withholding the requested report from disclosure, we find that the commission must release the report to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 110271

Enclosures: Submitted documents

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